

**ASSEMBLY BILL**

**No. 1430**

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**Introduced by Assembly Member Swanson**

February 27, 2009

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An act to add Section 49423.4 to the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1430, as introduced, Swanson. Pupil health: licensed nurses.

Existing law establishes the public elementary and secondary school system in this state. Under this system, school districts throughout the state provide instruction to pupils in kindergarten and grades 1 to 12, inclusive, at the public elementary and secondary schools.

Existing law provides that any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon, may be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements, as prescribed, from the physician and the parent, foster parent, or guardian of the pupil.

The existing Nursing Practice Act regulates the practice of nursing, which is defined in the act as those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill.

This bill would express findings and declarations of the Legislature with respect to a Superior Court ruling relating to the administration of medication to pupils in California public elementary and secondary

schools. This bill, notwithstanding the provision referenced above that authorizes assistance to be given to a pupil by school personnel during the schoolday under certain conditions, would require that any medication that is administered to a pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon shall be administered by a licensed nurse in compliance with the Nursing Practice Act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The Nursing Practice Act (Chapter 6 (commencing with  
4 Section 2700) of Division 2 of the Business and Professions Code)  
5 was designed to protect patients in the administration of  
6 medications.

7 (b) According to the ruling of the Superior Court of California  
8 in and for the County of Sacramento filed on December 26, 2008,  
9 in the case of American Nurses Association et al. v. O'Connell et  
10 al., the administration of medication to pupils in California public  
11 elementary and secondary schools must be accomplished in  
12 accordance with the requirements of the Nursing Practice Act.

13 (c) The court specifically found that state laws authorize the  
14 administration of medication to a student only by a licensed health  
15 care professional acting within the scope of practice for which he  
16 or she is licensed to perform services.

17 (d) The court noted the statutorily authorized exceptions that  
18 authorize an unlicensed person to administer medication, but  
19 specifically noted that assistance within the meaning of Section  
20 49423 of the Education Code does not encompass the  
21 administration of medications. The court ruled that the plain  
22 meaning of assistance and administration, as well as the legislative  
23 history of the section, indicate that assistance is distinct from,  
24 rather than synonymous or interchangeable with, administration.

25 SEC. 2. Section 49423.4 is added to the Education Code, to  
26 read:

27 49423.4. Notwithstanding Section 49423, any medication that  
28 is administered to a pupil who is required to take, during the regular

1 schoolday, medication prescribed for him or her by a physician or  
2 surgeon shall be administered by a licensed nurse in compliance  
3 with the Nursing Practice Act (Chapter 6 (commencing with  
4 Section 2700) of Division 2 of the Business and Professions Code).  
5 Nothing in this section prohibits an individual authorized under  
6 Section 49414 or 49414.5 from rendering emergency medical aid.

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